

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-919

L.J.

vs.

W.L.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff appeals from an order denying the extension of an abuse prevention order that had been in effect for one year.¹ She claims that the denial was (1) in error because the judge failed to articulate the standard of law he applied and (2) an abuse of discretion because the evidence weighed substantially in favor of extension. We affirm.

¹ The plaintiff also appeals from various orders entered within the same proceeding. Specifically, the plaintiff asks this court to rule on the propriety of the judge (1) requiring her to vacate her residence or pay rent to the defendant, after he had granted her a one-year abuse prevention order, (2) sua sponte shortening the length of the abuse prevention order based upon the defendant's filing of a motion to terminate, and (3) allowing the defendant to obtain discovery, after termination of the abuse prevention order, for use in a related criminal proceeding. The plaintiff sought and obtained single justice relief for each of these orders, which have become moot. Though the issues are significant, we decline to reach them, given the clear guidance already provided to the trial court on these issues. See Guidelines for Judicial Practice: Abuse Prevention Proceedings (2011).

Discussion. At a hearing to extend an abuse prevention order pursuant to G. L. c. 209A, the burden is on the plaintiff to establish facts justifying the extension by a preponderance of the evidence. Iamele v. Asselin, 444 Mass. 734, 736 (2005). "The standard for obtaining an extension of an abuse prevention order is the same as for an initial order." MacDonald v. Caruso, 467 Mass. 382, 386 (2014). That is, the plaintiff must establish reasonable fear of imminent serious physical harm. See id. "It is the totality of the conditions that exist at the time that the plaintiff seeks the extension, viewed in the light of the initial abuse prevention order, that govern." Iamele, supra at 741. Among other things, the judge should consider "the defendant's violations of protective orders, ongoing child custody or other litigation . . . likely to engender hostility, the parties' demeanor in court, the likelihood that the parties will encounter one another in the course of their usual activities . . . , and significant changes in the circumstances of the parties." Id. at 740. We review the judge's decision whether to extend an order for an abuse of discretion or other error of law. Crenshaw v. Macklin, 430 Mass. 633, 636 (2000).

Here, the judge heard testimony from both parties, who were each represented by counsel and subject to cross-examination, and ultimately declined to extend the order. Although he made no specific findings, we may fairly conclude that he determined

that the plaintiff had failed to meet her burden.² On the record presented, this determination was within the judge's discretion.

The plaintiff testified that she had known the defendant for thirty-seven years, she had been in a domestic relationship living with him for the past ten years, and together they had one child (now an adult) who also lived with them. She explained the facts leading up to the issuance of the initial restraining order on March 15, 2017. She stated that the defendant came home with a friend after drinking. Once the friend left, the defendant started arguing with her. She went upstairs to the bedroom to avoid the argument, but the defendant followed her, grabbed her arm, and threatened to beat and kill her. The plaintiff then went to the police department, filed a report, and returned home. Shortly thereafter, the defendant again threatened to beat and kill the plaintiff, saying, "[I]t's not a threat, it's a promise." She then called the police, who arrested the defendant, and obtained a restraining order requiring the defendant to stay away from the house and have no contact with the plaintiff.

² Contrary to the plaintiff's argument on appeal, there is no requirement that a trial judge articulate the legal standard the judge is applying when making a ruling. Rather, a judge is presumed to know the law and apply it correctly. See Commonwealth v. Carter, 481 Mass. 352, 361 (2019). There is nothing in the record here that causes us to doubt that presumption.

When asked whether the defendant had contacted her since the issuance of the restraining order, the plaintiff mentioned a series of text messages that the defendant sent to their daughter on February 8, 2018, approximately one month prior to the expiration of the order. The plaintiff testified that, although the defendant had a key to the house, he texted their daughter, asking for her permission to return. The defendant told the daughter that he was "homeless" and "freezing" and wanted to return to the house. When the daughter stated that she could not let him in because of the plaintiff's restraining order, the defendant suggested that the plaintiff could stay upstairs and there would be no trouble. The plaintiff also testified that there was a pending action between the parties in Housing Court concerning rent.³ Finally, the plaintiff testified that she remained in fear of the defendant and that, "[b]ecause of this whole thing," she had "PTSD," "nightmares," and "flashbacks."⁴

³ The plaintiff submitted a supplemental affidavit at the extension hearing in which she averred that, in the context of an eviction proceeding where both parties were represented by counsel, she agreed to vacate the premises by September 1, 2018.

⁴ The plaintiff also called the defendant as a witness and elicited testimony from him that he was not happy that the plaintiff had been living at his house and that he had filed an eviction action against her. When asked about the text messages, the defendant admitted to texting his daughter because he needed a place to stay. Additionally, counsel represented to the judge that the defendant had been found not guilty of the

Despite the plaintiff's testimony regarding the ongoing effects of the defendant's actions one year ago, the judge could well have determined that no further extension of the order was necessary to protect the plaintiff from the likelihood of abuse. See Iamele, 444 Mass. at 739. The defendant did not object to the initial issuance of the order, thereby allowing the plaintiff to obtain the order without challenge. When the defendant later sought to have the order terminated on the basis that the plaintiff was living in his house without paying rent, he was advised that the proper method of dealing with the issue was an eviction action. He followed that route and a settlement was reached in which the plaintiff agreed to vacate on a date certain. The criminal case had resolved in a manner favorable to the defendant. Though the defendant did seek to return home, he did not contact the plaintiff.⁵ When his daughter refused to allow him to return home, he abided by her decision, even though he apparently had a key to let himself in.

Under the circumstances, the judge could well have determined that circumstances had changed since the initial issuance of the order such that no additional extension of the

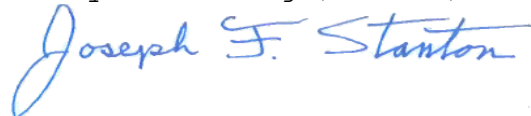
criminal charges that arose out of his arrest preceding the issuance of the restraining order.

⁵ The plaintiff argued that the defendant's text messages to the daughter constituted impermissible third-party contact; however, on the evidence presented, the judge would have been warranted in finding no such violation.

order was necessary to protect the plaintiff. The parties would no longer be living together and the most volatile issues between the parties had been resolved -- the criminal case and the plaintiff's move-out date. We cannot say that it was an abuse of discretion for the judge to have declined to further extend the abuse prevention order.

Order entered April 5, 2018,
affirmed.

By the Court (Wolohojian,
Neyman & Singh, JJ.⁶),



Clerk

Entered: July 10, 2019.

⁶ The panelists are listed in order of seniority.